

June 08 2022 4:14 PM

CONSTANCE R. WHITE
COUNTY CLERK
NO: 22-2-06777-8

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

MARK D. STEPHENS and LYNN STEPHENS,

Plaintiffs,

v.

TOWN OF STEILACOOM, a municipal
corporation,

Defendants.

CAUSE NO: 22-2-06777-8

PLAINTIFFS' AMENDED
COMPLAINT

COMES NOW the Plaintiffs, by and through their undersigned attorney, and for claims
against Defendants, alleges as follows:

I. PARTIES

1.1 Plaintiffs Mark D. Stephens and Lynn Stephens reside in Pierce County,
Washington and own the real properties described below at issue in this lawsuit.

1.2 Defendant Town of Steilacoom is a municipal corporation located in Pierce
County, Washington.

1.3 The real properties at issue in this lawsuit are located within and are subject
to the jurisdiction of the Defendant.

II. JURISDICTION AND VENUE

2.1 Jurisdiction and venue are appropriate in Pierce County pursuant to RCW
4.12.010(1) because this matter involves real property located in Pierce County, Washington.

2.2 The Court has *in rem* jurisdiction over this matter, which is an action

AMENDED COMPLAINT - 1

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1 concerning real property rights regarding property situated in Pierce County, Washington.

2 2.3 Venue is proper in Pierce County, Washington.

3 III. FACTS

4 3.1 Plaintiffs own four (4) parcels that are adjacent to each other and located off
5 Beech Street, between the 3rd Street and 4th Street right-of-way in the Town of Steilacoom,
6 Pierce County, Washington.

7 3.2 Plaintiffs' parcels have the following abbreviated legal descriptions and
8 Assessor Parcel Numbers (APN):

9 Parcel A:

10 Section 06 Township 19 Range 02 Quarter 23 ROGERS 1ST L 11 &
11 12 B 1 APPROVED SUBD BY CY OF STEILACOOM 5/5/14 OUT
12 OF 001-2 SEG 2015-0045 JP 07/25/14 JP

13 APN 7260000017

14 Parcel B:

15 Section 06 Township 19 Range 02 Quarter 23 ROGERS 1ST L 13 &
16 14 B 1 APPROVED SUBD BY CY OF STEILACOOM 5/5/14 OUT
17 OF 001-2 SEG 2015-0045 JP 07/25/14 JP

18 APN 7260000018

19 Parcel C:

20 Section 06 Township 19 Range 02 Quarter 23 Saltars 1st Add L 1 B 3

21 APN 7395000040

22 Parcel D:

23 Section 06 Township 19 Range 02 Quarter 23 Saltars 1st Add L 1 B 4

24 APN 7395000050

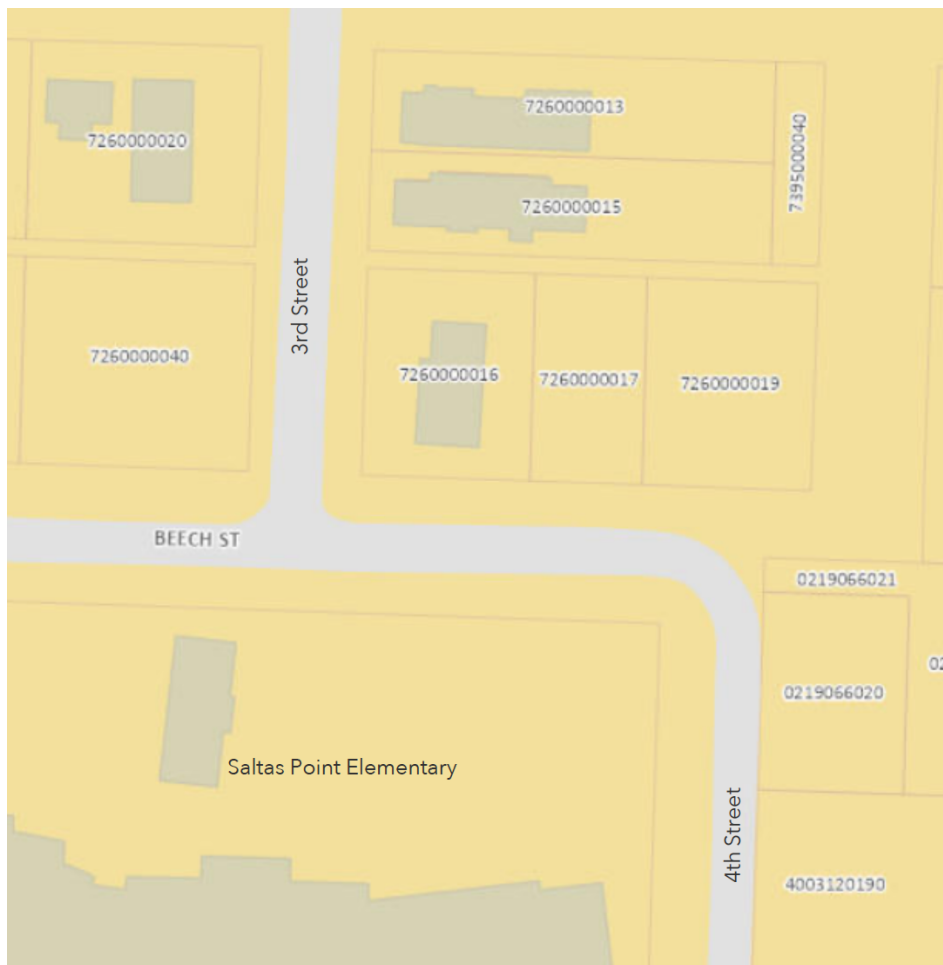
25 3.3 Parcel B and D were subsequently consolidated into one tax parcel, with the
26 following abbreviated legal description and APN:

Section 06 Township 19 Range 02 Quarter 23 ROGERS 1ST L 13 & 14 B 1
TOG/W L 1 B 4 SALTARS 1ST ADD COMB APPROVED BY TOWN OF
STEILACOOM 5/6/2021 COMB OF 7260000-001-8 & 7395000-005-0 SEG
2022-0106 9/17/2021 BB

APN 72600000019.

3.4 Plaintiffs' properties are located on the north side of Beech Street in the Town of Steilacoom, between 3rd Street and the 4th Street right-of-way. The parcels are across Beech Street and to the northeast of Saltas Point Elementary.

3.5 Plaintiffs' properties are situated as depicted in the diagram below:



3.6 All of the above-described parcels are vacant and undeveloped.

3.7 A single family residence is located at 815- 3rd Street, APN 7260000016, adjacent and west of Parcel A.

1
2 3.8 Defendant has permitted and approved the construction of storm water
3 drainage features that have caused surface water from properties to the south to be channeled
4 in drainage ditches over and across Plaintiffs' parcels, resulting in periodic standing water
5 conditions.

6 3.9 In addition, in approximately 2014, the City permitted and approved a new
7 housing development on 4th Street to construct a surface water drainage and run-off system
8 that diverts water off those properties into a series of pipes, catch-basins and outfalls that is
9 then deposited onto the eastern corner of Plaintiffs' Parcel 7260000019, and then travels
10 north across Parcel 7395000040.

11 3.10 The surface water drainage systems described above were installed without
12 Plaintiffs' predecessor's permission.

13 3.11 Because of the voluminous surface water run-off caused by the described
14 surface water systems, Plaintiffs' parcels periodically become inundated with water, causing
15 ponding conditions.

16 3.12 Defendant has denied Plaintiffs the right to to pipe and/or otherwise divert
17 the artificially channeled surface water from their properties.

18 3.13 The continuing presence of the above-described artificial surface water
19 conditions has resulted in damage to Plaintiffs' properties and their rights therein, including
20 the ability to develop the properties.

21 IV. CAUSES OF ACTION

22 A. First Cause of Action: Quiet Title

23 4.1 Plaintiffs are the legal owners of the above-described properties.

24 4.2 Defendant's intrusion onto Plaintiffs' properties is wrongful and does not
constitute a legal interest in said properties.

1 4.3 Defendant's intrusion onto Plaintiffs' properties does not constitute adverse
2 possession or any type of prescriptive or implied easement or right.

3 4.4 Pursuant to RCW 7.28.010 *et seq.*, and common law, Plaintiffs are entitled to
4 an order quieting title to their properties including without limitation the exclusive rights of
5 access to, upon, over, and through, and use, maintenance and quiet enjoyment of the entirety
6 of the properties as against the Defendant and any and all other persons claiming any interest
7 therein, whether it be by virtue of any contract, undertaking, assignment, grant, conveyance
8 or any act of Defendant or any other person.

9 4.5 Defendant has no actual right or interest in Plaintiffs' properties. Plaintiffs
10 and their predecessors-in-interest have provided no permission for Defendant to trespass
11 upon or divert water onto their properties. Neither have Plaintiffs or their predecessors-in-
12 interest been provided consideration for any interest or right to their properties.

13 4.6 Plaintiffs are entitled to a judgment rejecting any such interest of Defendant
14 or others, and quieting title in Plaintiffs' names.

15 B. Second Cause of Action: Injunctive Relief

16 4.7 Plaintiffs have clear legal and equitable rights and well-grounded fears of
17 immediate, ongoing and continuing invasion of those rights by Defendant. Defendant's acts
18 are resulting in, and will continue to result in, actual and substantial injury to Plaintiffs.

19 4.8 Plaintiffs lack adequate remedy in law to prevent further intrusion.

20 4.9 Plaintiffs request prohibitive and/or mandatory injunctive relief barring
21 Defendant from trespassing on their properties, and requiring the removal of any ditches,
22 drains, pipes, out-falls or other means and manners of disbursing water onto their property.

23 4.10 Defendants should be enjoined from preventing Plaintiffs from diverting
24 and/or otherwise halting the flow of surface water onto and across their properties.

 4.11 Defendants should be required to design, engineer, and construct alternative

1 surface water drainage systems that prevent the artificial and unauthorized discharge of
2 surface water onto Plaintiffs' properties.

3 C. Third Cause of Action: Trespass

4 4.12 Defendant's approval and permitting of the use of Plaintiffs' property to
5 dispose of water, constitutes trespass onto Plaintiffs' property.

6 4.13 The collection and diversion of water onto Plaintiffs' property constitutes a
7 continuing trespass pursuant to RCW 4.24.630.

8 4.14 Defendant's use and activity on Plaintiffs' property has interfered with
9 Plaintiffs' right to quiet enjoyment thereof, and right to develop the properties.

10 4.15 Plaintiffs seek ejectment of the Defendant's artificial channeling of water onto
11 their property.

12 4.16 Plaintiffs have been damaged by the loss of use of their properties and the
13 right to develop them as a result of the trespass.

14 4.17 Plaintiffs seek all available damages, plus treble damages pursuant to RCW
15 4.24.630, in an amount to be proven at trial.

16 D. Fourth Cause of Action: Nuisance

17 4.18 By taking actions causing certain harm to the Plaintiffs' properties, Defendant
18 has caused a substantial, unreasonable interference with the Plaintiffs' private use and/or
19 enjoyment of their properties.

20 4.19 Defendant's actions constitute an ongoing unlawful nuisance under RCW
21 7.48.010.

22 4.20 Plaintiffs have suffered damages from Defendants' nuisance, in an amount to
23 be proven at trial.

24 4.21 Plaintiffs are also entitled to a warrant requiring the Pierce County Sheriff to
abate, deter or prevent the resumption of such nuisance as per RCW 7.48.020.

D. Fifth Cause of Action: Inverse Condemnation/Taking

4.22 Defendant's conduct has resulted in a permanent or recurring interference that destroys or derogates Plaintiffs' fundamental ownership interests in the properties.

4.23 Defendant has taken or damaged Plaintiffs' private property for public use without just compensation being paid and without institution of formal eminent domain proceedings.

4.24 Defendant's conduct has deprived Plaintiffs their constitutional rights under color of state law in violation of the Civil Rights Act, 42 U.S.C. § 1983.

4.25 Defendant's inverse condemnation has proximately caused Plaintiffs to suffer ongoing diminution in value, loss of profit and/or other compensable damages.

E. Sixth Cause of Action: Substantive Due Process Violation

4.26 Defendant's conduct has resulted in a permanent or recurring interference that destroys or derogates Plaintiffs' protected property interests and benefits to which they have a legitimate claim of entitlement.

4.27 Defendant's conduct, including the placement of surface waters and refusal to allow Plaintiffs to redirect the water from their properties, is arbitrary, capricious, and shocks the conscience.

4.28 Defendant's conduct has deprived Plaintiffs their constitutional rights under color of state law in violation of the Civil Rights Act, 42 U.S.C. § 1983.

4.29 Defendant's violation of Plaintiffs' substantive Due Process rights has proximately caused Plaintiffs' to suffer ongoing diminution in value, loss of profit and/or other compensable damages.

F. RCW 4.96.020

4.30 Plaintiffs have satisfied and are in compliance with RCW 4.96.020, having submitted their claim more than 60 days prior to initiation of this lawsuit.

V. PRAYER FOR RELIEF

WHEREFORE, having asserted claims for relief, Plaintiffs pray for judgment against Defendant as follows:

5.1 That the Court enter judgment quieting title to the above-described properties in Plaintiffs' names and as against any and all interests in Defendant with regard to said properties.

5.2 That Defendant be forever barred from having or asserting any right, title, interest, estate, lien in or to Plaintiffs' properties, herein described.

5.3 That Defendant be required to cease and desist from allow any surface water systems to artificially channel surface water onto Plaintiffs' properties.

5.4 That Defendant be enjoined from taking any action against Plaintiffs or otherwise prevent them from ceasing and redirecting artificially channeled surface water from their properties.

5.5 That the Court enter judgment against Defendant for damages resulting from Defendant's past and continuing trespass in an amount to be proven at trial.

5.6 That the Court enter judgment against Defendant for damages resulting from Defendant's continuing trespass, including without limitation, treble damages as per RCW 4.24.630, in an amount to be proven at trial.

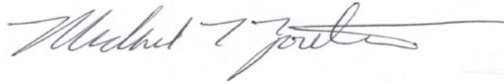
5.7 That the Court enter judgment against Defendant for damages resulting from Defendant's nuisance, in an amount to be proven at trial.

5.8 That the Court award Plaintiffs their costs and reasonable attorneys' fees under RCW 4.24.630, RCW 8.25.075(3) and/or 42 U.S.C. § 1983.

5.9 That the Court award such other and further relief as it deems just and equitable in the premises.

1 DATED this 8th day of June, 2022.

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